

REMARKS

Applicants thank the Examiner for the detailed Office Action dated November 4, 2004. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Applicants have amended the specification to delete the previous title and replace it with: METHOD FOR PRODUCING MODIFIED OILSEED MATERIAL

Claims 1-3 were pending in the application.

Claims 1 and 3 are requested to be cancelled without prejudice or disclaimer.

Claim 2 is being amended.

Claims 4-32 are being added.

After amending the claims as set forth above, claims 2 and 4-32 are now pending in this application.

Cancelled Claims

Applicants have canceled claims 1 and 3 without prejudice to further prosecution. Accordingly, the rejections in the Office Action directed to claims 1 and 3 are moot. Applicants, however, wish to make it clear that by canceling claims 1 and 3 Applicants are not acquiescing to the rejections of claims 1 and 3 as outlined in the Office Action.

On page 5 of the Office Action, claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over any one of U.S. Patent Nos. 6,777,017 ('017 Patent), 6,716,469 ('469 Patent), 6,599,556 ('556 Patent), or 6,720,020 ('020 Patent). Applicants note that 18 claims were not pending in the application. Applicants believe that the reference to claims 1-18 was a typo and that the Office Action meant to recite "claims 1 and 3" in place of "claims 1-18." Therefore, Applicants have treated the rejection referring to claims 1-18 as being a rejection of claims 1 and 3, which is made moot by Applicants' action canceling claims 1 and 3.

Claim Rejections – 35 U.S.C. § 103

On page 6 of the Office Action, claim 2 was provisionally rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Application No. 09/883,558 which is now U.S. Patent No. 6,830,773 ('773 Patent) or U.S. Application No. 09/989,743 ('743 Application) which is now the '017 Patent. Applicants respectfully traverse the rejection. None of the cited references may be properly cited against this patent application.

Applicants note the cited references are being asserted as 35 U.S.C. § 102(e)/103(a) references. Pursuant to 35 U.S.C. § 103(c), this type of rejection is not proper where the subject matter in the references cited under § 102(e) and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Applicants have provided a separate paper entitled "Statement of Common Ownership Under 35 U.S.C. § 103(c)" which provides evidence that the provisions of 35 U.S.C. § 103(c) apply in this situation to disqualify the use of the '773 Patent and the '017 Patent as references under § 103(a). Thus, the rejection of claim 2 under 35 U.S.C. § 103(a) is improper. Accordingly, Applicants request withdrawal of the rejection.

Double Patenting

On page 5 of the Office Action, claim 2 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 21 of U.S. Application No. 09/883,558 which is now the '773 Patent and claim 33 of U.S. Application No. 09/989,743 ('743 Application) which is now the '017 Patent.

Applicants note that claim 21 of U.S. Application No. 09/883,552 did not issue in the '773 Patent. Thus, the double patenting rejection over claim 21 of U.S. Application No. 09/883,558 is no longer applicable. Applicants have provided a Terminal Disclaimer pursuant to 37 C.F.R. § 1.321(c) which overcomes the double patenting rejection of claim 2 in view claim 33 of U.S. Application No. 09/989,743. Accordingly, Applicants request withdrawal of this rejection.

Inventorship

Applicants have also included a "Request to Correct Inventorship Under 37 C.F.R. § 1.48(b)" with this Reply. Applicants respectfully request that the inventorship be corrected accordingly.

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Applicants respectfully submit that each and every outstanding objection and rejection has been overcome, and the present Application is in a condition for allowance. The Applicants request reconsideration and allowance of the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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METHOD FOR PRODUCING MODIFIED OILSEED MATERIAL

A method for producing modified oilseed material from oilseed-based material is provided. The method includes extracting oilseed material with an aqueous solution to form a suspension of particulate matter in an oilseed extract; and passing the extract through a filtration system, which includes a microporous membrane to produce a permeate and a protein-enriched retentate. The microporous membrane commonly has a filtering surface with a contact angle of no more than about 40 degrees. The modified oilseed material can be utilized in a variety of nutritional applications, including the preparation of protein supplemented food products such as beverages, processed meats, frozen desserts, confectionery products, dairy-type products, and cereal grain products.